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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 UNITED STATES OF AMERICA,

5 v.

23 CR 251 (AKH)

6 CHARLIE JAVICE and OLIVIER
7 AMAR,

8 Defendants.

9 -----x

10 New York, N.Y.
11 May 30, 2021
12 4:20 p.m.

13 Before:

14 HON. ALVIN K. HELLERSTEIN,

15 District Judge

16 APPEARANCES

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18 United States Attorney for the
19 Southern District of New York

20 DINA McLEOD

21 RUSHMI BHASKARAN

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1 THE COURT: This is U.S. v. Charlie Jervice. Counsel,
2 please state your appearances for the record.

3 MS. McLEOD: Good afternoon, your Honor.

4 Dina McLeod, Rushmi Bhaskaran, and Nicholas
5 Chiuchiolo, for the government.

6 THE COURT: Good afternoon.

7 MR. NITZE: Sam Nitze, Neil Phillips, Jenny Braun,
8 here for defendant, Charlie Javice.

9 THE COURT: Good afternoon.

10 MR. BUCKLEY: Good afternoon.

11 Sean Buckley, Alexandra Swette, Jenna Sinel, Jake
12 Rush, for Mr. Amar, who is seated with me at counsel table.

13 THE COURT: I'm sorry that you had to wait while we
14 recovered a bit from a trial day, but here we are.

15 So we have a motion by defendants to dismiss the
16 indictment, to ask for a bill of particulars, and to suppress
17 evidence obtained by a warrant. Who will speak for the
18 defendants?

19 MR. NITZE: Sam Nitze for Ms. Javice.

20 MR. BUCKLEY: And Sean Buckley on behalf of Mr. Amar.

21 THE COURT: Who is going first?

22 MR. NITZE: I will, your Honor.

23 THE COURT: Please take the podium. Go ahead.

24 MR. NITZE: So, your Honor, we advance a number of
25 arguments in the papers in support of dismissal of the

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1 indictment. We think every count is deficient. And I'm happy
2 to answer questions about some of the bases for dismissing
3 them, but I wanted to focus today on really the core theme
4 that's at the center of the motion papers, which has to do with
5 lack of specificity in the charging instrument.

6 THE COURT: The threshold is pretty low; isn't it?

7 MR. NITZE: It is low. And it has Constitutional
8 underpinnings. It has to satisfy -- it has to set forth the
9 elements of the offenses charged, but also independently to
10 give a sufficient factual basis to permit a defendant to
11 prepare to defend at trial. And it's really that second aspect
12 that we think is badly lacking here.

13 And, of course, you know, there are phrases in cases
14 saying you need do little more than track the language of the
15 indictment. You are, of course, familiar with that. But
16 really behind that, and in the context of the cases that
17 grapple with this question, is a question about fair notice.

18 THE COURT: There are two elements here. What's
19 legally required for an indictment and the second is what's
20 fair to you. So that you could prepare for trial and know what
21 you have to deal with.

22 The first one, I think you can see that the threshold
23 is very low, that if the government tracks -- if the indictment
24 tracks the statute, it's sufficient.

25 MR. NITZE: I don't concede that this indictment

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1 satisfies the threshold of the crime, but --

2 THE COURT: It seems to. I mean, the first count is
3 an indictment. They do allege a conspiracy in Paragraph 2.
4 They allege the illegal object of the conspiracy in
5 Paragraph 3. And that spells out the conspiracy, similarly
6 with wire fraud and bank fraud and securities fraud. I mean,
7 it's not a bill of particulars, which you also want. It's an
8 indictment. It does the job.

9 MR. NITZE: I agree that it sets out the elements of
10 the charged offenses. It does not provide, at the level of the
11 indictment, the charging instrument sufficient factual
12 allegations to put the defense on notice. I mean, I can move
13 to the argument about bill of particulars. I just --

14 THE COURT: Well, I need to determine the adequacy of
15 the indictment. So if you have any arguments, present them.

16 MR. NITZE: That is the argument, that if you look at
17 the requirement, although the bar is low, especially in a fraud
18 case.

19 THE COURT: Well, what's missing from the conspiracy
20 count?

21 MR. NITZE: Which misrepresentations. The nature of
22 the omissions or misrepresentations.

23 THE COURT: They don't have to do that.

24 MR. NITZE: Which victims. Who, in particular, was
25 intended to be defrauded.

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1 THE COURT: Indictments don't have to do that.

2 MR. NITZE: They have to allege some factual basis.

3 THE COURT: You allege enough so that you know what's
4 charged and that -- it sets up a double jeopardy guarantee. If
5 you're guilty, you know what you're guilty of, and no one can
6 sue you again. If you're not guilty, you know what you're
7 acquitted of. Look, the indictment does what it has to do, not
8 more. But it does what it has to do. I don't see any point of
9 illegality in it.

10 MR. NITZE: I'm sorry. I didn't hear you. You don't
11 see any point?

12 THE COURT: I don't see any deficiency in it. I could
13 see your need for a bill of particulars, perhaps. We'll go
14 into it. But for an indictment, I think it's okay.

15 What do you say, Mr. Buckley?

16 MR. BUCKLEY: Thank you, Judge.

17 I just wanted to jump in on the point that your Honor
18 is making. We believe that the indictment is legally
19 insufficient for the reasons that Mr. Nitze pointed out. But
20 in addition, recognizing your Honor's ruling here, we don't
21 think it adequately alleges bank fraud as a matter of law.

22 THE COURT: I'm sorry. You don't think it adequately
23 alleges?

24 MR. BUCKLEY: Bank fraud as a matter of law. And the
25 reason being the conduct that is set forth both in the

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1 indictment and in the government's complaint is conduct that it
2 is ascribing to JP Morgan in operating in a capacity that is
3 beyond what the bank fraud statute was designed to protect. It
4 was not operating as an FDIC insured entity when it invests and
5 acquires a company.

6 So bank fraud, under those circumstances, for the
7 reasons that we noted, and I don't want to repeat our briefing
8 to the Court as I'm sure the Court has reviewed --

9 THE COURT: I don't mind repetition.

10 MR. BUCKLEY: At Page 25 to 27 of our opening brief,
11 we set forth the authorities that make clear, including FINRA's
12 reporting requirements and preservation requirements -- if the
13 Court recalls, one of the issues that has come up in the course
14 of the discovery disputes that we've had is the destruction of
15 e-mails or files maintained by custodians that we believe are
16 relevant to this case. If the bank were operating in an FDIC
17 insured capacity, it would not have been permitted to destroy
18 those files under FINRA's regulations.

19 So we think that further supports the point here.
20 That at the end of the day, yes, JP Morgan Chase operates as an
21 FDIC insured entity. The conduct in which it engaged, as
22 alleged in the indictment, is separate and apart from that role
23 as an FDIC insured entity, and therefore the applicability of
24 the bank fraud statute is not appropriate under these
25 circumstances. There are other federal fraud statutes that do

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1 not rely upon the FDIC insured status or responsibilities of a
2 bank.

3 It's effectively operating as a commercial party
4 trying to market its products. That does not deserve the
5 heightened protections that the bank fraud statute, 18 U.S.C.
6 1344 provides. And we think for that reason, the indictment is
7 defective on its face.

8 And there's an additional reason with respect to
9 securities fraud as applied to Mr. Amar that I'm happy to
10 address with the Court. But that, I think, is a core and
11 fundamental flaw with the legal authority presented by the
12 indictment in this case that warrants dismissal.

13 THE COURT: Ms. McLeod. On bank fraud.

14 MS. McLEOD: Your Honor, if it's all right with the
15 Court --

16 THE COURT: Take the podium, please.

17 MS. McLEOD: -- AUSA Bhaskaran will address this.

18 THE COURT: Surely. Mr. Nitze, if you will surrender
19 the podium, please?

20 MR. NITZE: Sure.

21 MS. BHASKARAN: Thank you, your Honor.

22 The bank fraud statute does not limit itself to only
23 those situations when a bank is acting in its core banking
24 capacity. There are two ways to violate Section 1344, the bank
25 fraud statute. The first is through a scheme to defraud a bank

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1 of something of value. That prong of the statute does not say
2 that the scheme to defraud has to involve something such as a
3 loan agreement or anything like that.

4 And the second way that a defendant can violate the
5 bank fraud statute is through a scheme to obtain money or
6 property under the custody of a bank. And so that prong, too,
7 does not require a bank to be acting in an official banking
8 capacity. And, in fact, that prong doesn't require a bank to
9 be defrauded at all. It just requires a scheme to obtain
10 property under the bank's custody.

11 So what the defendants are asking the Court to do here
12 is to read in a statutory requirement that a bank be acting in
13 a certain way when it is defrauded. But the statute does not
14 do that. The indictment here tracks the language of
15 Section 1344. And so for that reason, it is sufficient. There
16 is no requirement that the banking -- that the fraud that is
17 alleged has to relate to core banking functions.

18 THE COURT: Thank you, Ms. Bhaskaran.

19 I hold that the motion with respect to bank fraud
20 should be denied. In order to allege a bank fraud offense, the
21 indictment need only describe a scheme to deprive the bank of
22 something of value or to obtain any of the moneys or other
23 property owned by or under the custody or control of a
24 financial institution. That's the holding of the *United States*
25 *v. Weigand*, 482 F.Supp. 3d 224 at Page 235 (S.D.N.Y. 2020).

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1 The indictment tracks this language and the allegations are
2 sufficient.

3 The case relied on by the defendant, *United States v.*
4 *Bouchard*, 828 F.3d 116 at Page 126 (2d Cir. 2016) involved a
5 completely distinguishable situation. There, the defendant was
6 convicted of bank fraud for defrauding an uninsured mortgage
7 broker that was a subsidiary of Lehman Brothers, a financial
8 institution. The Second Circuit held that Lehman's interest
9 was insufficient to establish a Section 1344 liability because
10 the mortgage company, not Lehman as the financial institution,
11 was a target of the scheme. We don't have that here. We have
12 an allegation of a fraud that deprived the bank of its
13 property. So that part of the motion is denied.

14 With respect to the other parts to the motion, the
15 motion is also denied.

16 With regard to the motion to dismiss, the elements of
17 a conspiracy are alleged, and there is sufficient notice in
18 these allegations, to allow the defendant to defend. There is
19 an argument that materiality is not alleged specifically, but
20 it's alleged sufficiently in the allegation of fraud. And
21 under *United States v. Klein*, 467 F.3d 111 (2d Cir. 2007), an
22 allegation of materiality can be inferred from the use of
23 "fraud," of the word "fraud" in the indictment. That was also
24 the holding of *Neder v. United States*, 527 U.S. 1 at Page 1,
25 decided in 1999. The wire fraud, the bank fraud, the

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1 securities fraud are all sufficiently alleged. So the motion
2 to dismiss is denied.

3 We'll come on to the bill of particulars.

4 Now, there's been extensive discovery in this case.
5 There's a complaint that goes over the details of the crimes
6 alleged in sufficient detail so that the defendants know what's
7 going on and have plenty of notice to defend themselves. I
8 wonder why that's not enough, Mr. Nitze.

9 MR. NITZE: Your Honor, the case centers on a
10 conspiracy and a set of schemes in the substantive counts that
11 leave us without any -- we don't have a good understanding of
12 its scope. We don't know -- the most important thing is we
13 don't know who we are alleged to have conspired with.

14 We have two defendants before the Court alleged to
15 have engaged in a conspiracy with others known and unknown.
16 And the charging instruments provide -- even if you look to the
17 complaint and the discovery -- really no meaningful guidance as
18 to who those others might be.

19 And, in fact, in conferring with the government before
20 filing the request for the application for particulars, the
21 government directed us to a document dated May 10 of 2021
22 before the alleged start of the conspiracy with some
23 76 entities and various officials and officers listed there.
24 It made the problem substantially worse, not better. We don't
25 know if we are to expect a trial at which we defend against an

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1 allegation that our client defrauded "Noodle" or any of the
2 other companies listed on that sheet.

3 And I would just note that here, unlike in the context
4 your Honor just addressed with respect to legal sufficiency of
5 the charging instrument, you have broad discretion to fashion a
6 remedy in the interest of fairness. And the various factors
7 that courts look to that are -- there are several of them set
8 out in the *Nachamie* case, but there are others -- cut heavily
9 in favor of further particulars being provided here.

10 There's no government investigation at jeopardy. This
11 is not a violent crime case where there might be interests in
12 shielding the names of conspirators in the interest of witness
13 safety. Nor is it the type of alleged conduct at issue in many
14 of those cases where the Court could reason that the defendants
15 know who they are alleged to have conspired with because of the
16 nature of the conduct. Your Honor has --

17 THE COURT: I take your point, Mr. Nitze.

18 It's important to know who the conspirators are
19 because their statements will be binding once they are shown to
20 be members of the conspiracy. In order to defend, they need to
21 know who will be the conspirators. That doesn't mean that you
22 be precluded from everybody else. But there's got to be some
23 more information disclosed.

24 MS. McLEOD: Your Honor, would you like me to take the
25 podium or --

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1 THE COURT: Yeah, take the podium.

2 MS. McLEOD: So, your Honor, I think we addressed this
3 in our briefing. I think the main concern that the government
4 has is that a bill of particulars binds the government's proof
5 to the bill of particulars. And as Judge Liman pointed out in
6 *United States* --

7 THE COURT: I don't need you to be bound. I
8 understand what you are worried about. You're worried that if
9 you list seven, you will be barred from using the eighth. What
10 I'd like to have is a good-faith listing of the names that you
11 know of, and you can add language that reserves your right to
12 deal with others as they come up. But I do want Mr. Nitze and
13 Mr. Buckley to have knowledge of who the conspirators are.

14 MS. McLEOD: That's understood, your Honor.

15 THE COURT: How are you going to do that?

16 MS. McLEOD: In a letter.

17 THE COURT: Okay. Mr. Buckley, are you satisfied with
18 that?

19 MR. BUCKLEY: With respect to the identities of
20 coconspirators, yes. That works for us on behalf of Mr. Amar.

21 THE COURT: Mr. Nitze?

22 MR. NITZE: With respect to that category of
23 particulars, yes, your Honor.

24 THE COURT: Okay. So you'll deliver that letter.

25 The second aspect of what they want to know by their

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1 motion...

2 MR. NITZE: If I may, your Honor.

3 THE COURT: No, I've got it.

4 A comprehensive list of the alleged
5 misrepresentations. Again, I am not looking to lay a trap for
6 you, Ms. McLeod, but that letter should include the list -- the
7 misrepresentations --

8 MS. McLEOD: Just to make sure we are appropriately
9 following the Court's direction, I assume that doesn't mean
10 every time the mis- -- what they are seeking in the motion is
11 every misrepresentation; the date, the time, who --

12 THE COURT: I'm not requiring that.

13 MS. McLEOD: Okay.

14 THE COURT: Because many of them were repeated a
15 number of times, and I don't need you to give that level of
16 particularization. But I want it -- I want you to tell
17 Mr. Buckley and Mr. Nitze what were the misrepresentations.

18 MS. McLEOD: Understood, your Honor. Again, this is
19 as with the unindicted coconspirators. This would not be in
20 the form of a bill of particulars that binds the government,
21 but is in order to provide them with additional information.

22 THE COURT: It's a disclosure order.

23 MS. McLEOD: Yes, your Honor.

24 THE COURT: And I think you can say what were the
25 misrepresentations, who uttered them, and to whom they were

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1 uttered, and if you have a date, you can provide the date. If
2 there are several dates, you can list a range of dates. But
3 there should be some level of disclosures.

4 MS. McLEOD: We can do that, your Honor. Just so your
5 Honor knows, in terms of the nature of the fraud scheme, the
6 nature was the defendants were pitching their company to many
7 other potential acquiring companies. And in their pitches and
8 in their statements to their own investment advisory firm, they
9 repeated the same misrepresentations --

10 THE COURT: Yeah. But you're focusing on Chase,
11 JP Morgan Chase. That's your focus. What they may have said
12 to others may be 404 evidence. But they are not
13 misrepresentations of a material nature. What was material is
14 what induced JP Morgan to do the deal.

15 MS. McLEOD: Understood, your Honor.

16 THE COURT: The third, fourth are the targets of the
17 alleged fraud. Well, the targets of the alleged fraud is
18 JP Morgan Chase.

19 Yes, Mr. Buckley.

20 MR. BUCKLEY: Thank you, Judge.

21 The indictment goes beyond JP Morgan Chase and
22 identifies Bank 1 as well. So to the extent they are
23 required -- they being the government -- is required to
24 identify the misstatements, by whom uttered, to who uttered,
25 and approximate dates, we would ask the same be done with

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1 respect to Bank 1. And this is particularly important for
2 Mr. Amar, as I know the Court is aware from just reviewing the
3 complaint. There is an utter paucity --

4 THE COURT: I take your point --

5 MR. BUCKLEY: -- of statements.

6 THE COURT: The indictment says, in order to defraud
7 those companies, meaning JP Morgan Chase and Bank 1 and maybe
8 others -- so I think we want to limit who we have. I think
9 you're going to identify Bank 1. And if there are others, in
10 other words, those companies, add them. But I guess we need to
11 limit here who are the targets.

12 MS. McLEOD: Yes, your Honor. We have identified
13 Bank 1 to the defendants. They know.

14 THE COURT: Get back to the letter. It will not be
15 burdensome.

16 MR. BUCKLEY: Judge, just to be clear, Bank 1, which
17 as Ms. McLeod stated, has been identified for us. But also the
18 other entities that they are going to contend were the subject
19 of the conspiracies or the schemes --

20 THE COURT: What about that, Ms. McLeod?

21 MS. McLEOD: So we think the letter that we -- the
22 disclosure letter where we will put in the misrepresentations
23 to the potential acquiring companies, which will include Bank 1
24 and JP Morgan Chase, approximate dates or date ranges, and the
25 speakers, if we're aware.

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1 THE COURT: Right. And I also want you to list the
2 targets of the conspiracy on the fraud.

3 MS. McLEOD: Yes. So by --

4 THE COURT: Who was being defrauded?

5 MS. McLEOD: Yes. So by that, the potential acquiring
6 companies would encompass your Honor's concern there.

7 THE COURT: How is it a securities fraud or any kind
8 of fraud if only JP Morgan did the deal? Why is there a fraud
9 for someone who didn't do the deal? That could be an attempted
10 fraud.

11 MS. McLEOD: So the fraud is complete when the
12 scheme -- so the scheme is -- so, yes, there are certainly
13 attempts on all of these companies. They completed all of the
14 elements of a fraud. For example, Bank 1, they told them lies
15 about the company in order to gain money or property from that
16 bank. The bank ultimately did not decide to give them that
17 money or property but they were still victims of the fraud
18 nonetheless.

19 THE COURT: I don't see how they are victims.
20 18 U.S.C. Section 2 is cited, and that takes in aiders,
21 abettors. Withdrawn.

22 If I utter a falsehood intending to cause you to part
23 with something of value but you don't, have I committed a
24 fraud?

25 MS. McLEOD: Yes. The fraud does not have to be

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1 successful.

2 THE COURT: I didn't know that. Okay. So you list
3 the targets of the fraud. I think that takes care of the bill
4 of particulars.

5 MR. BUCKLEY: Listing the targets of the fraud will
6 certainly help, your Honor. I do want to say the broad
7 construction that Ms. McLeod just gave, the mere utterance of
8 something misleading, giving rise to liability under the
9 federal fraud statutes, this may run directly into the issue
10 that we flagged in our motions regarding the Supreme Court's
11 case in *Ciminelli*, the Buffalo Billions case. That was decided
12 in I believe May of 2023, which said the mere deprivation of
13 information that could impact an economic decision is not
14 sufficient to give rise to criminal liability under federal
15 fraud statutes. It may give rise under other statutes, but not
16 criminal liability.

17 I just want to flag that so the Court is aware because
18 depending on the list of purported victims that are identified
19 as the acquiring companies, this may be an issue that we need
20 to reraise with the Court.

21 THE COURT: We don't have to do it now, though. There
22 will be time to do that with charges. It's enough now that
23 Chase was deprived of the property. So the fraud is complete
24 with Chase. And if the government has notions that others were
25 targeted, they'll list it.

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1 That that deals with the particular. Now we get to
2 the motion to suppress.

3 Mr. Buckley.

4 MR. BUCKLEY: Thank you, Judge.

5 So the motion to suppress obviously was filed on
6 behalf of Mr. Amar. And with the Court's permission, I'm going
7 to start from a bit of an unorthodox angle here, which is to
8 address the last argument that the government presented in
9 support of its opposition first. And the reason I do that is I
10 think it really encapsulates the core harm, the need for a
11 prophylactic suppression here of this sort of warrant.

12 So the government is not entitled, as so many cases
13 have found, to rely on good faith. And why is that?

14 In the first sentence, the warrant itself is riddled
15 with inaccuracies. The cover page of the affidavit called for
16 a warrant to authorize them to execute it at any time of day or
17 night. The warrant itself found that it was appropriate to
18 order delayed notice of a warrant that needs to be required --
19 needs to be served on the person at the time of execution.
20 Those flaws in the warrant in and of themselves were sufficient
21 to give a reasonable officer executing the warrant cause to
22 pause and consider, okay, are there other issues here.

23 Now, putting aside those technical flaws that the
24 government -- the only defense they present to them, despite
25 presenting it to a magistrate judge and averring that those

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1 requests were supported by information contained in the
2 affidavit itself, which they were not.

3 Putting that aside, the manner in which this warrant
4 was obtained and ultimately executed undercuts any claim of
5 good faith by the government. These agents obtained an
6 overbroad warrant. They obtained a warrant that called for the
7 seizure of every electronic device, either on Mr. Amar's person
8 or contained in Mr. Amar's home. Every electronic device.

9 As the Court in *Garcia* makes clear, and as numerous
10 courts, including the circuit in *Boles* made clear, the
11 application for a warrant needs to be specific as to the
12 particular property to be searched. That specificity cannot be
13 satisfied by a demand for and authorization to seize all
14 electronic devices. What the agents and the government were
15 required to do in applying for the warrant was to establish
16 particularized probable cause as to why a specific piece of
17 property, here Mr. Amar's cell phone, was likely to contain
18 evidence for its instrumentalities of the suspected crimes set
19 forth in the warrant.

20 A broad warrant that calls for execution in a
21 household to seize all electronic devices at any time of day or
22 night does not satisfy the particularity requirement.

23 Now, the reason that's central to this motion to
24 suppress is how the agents then used that overbreadth to their
25 advantage and to coerce, and in doing so, to violate the whole

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1 reason for the Fourth Amendment's prohibition on general
2 warrants.

3 When Mr. Amar was approached by the agents, he was
4 given an option. He was told either give us the phone, enter
5 your password, or we're going to execute the warrant to its
6 fullest effect. That is the problem with the overbreadth here.
7 It permitted them to use it coercively. And the way in which
8 they used it undercuts any claim that they were relying upon
9 the ruling of a magistrate to satisfy their good faith.

10 I'm happy to turn to the flaws with the probable cause
11 if the Court would like to hear that next or answer any
12 questions.

13 THE COURT: I'm familiar with the law. But as I'm
14 reviewing the affidavit, the affidavit shows good cause. This
15 is a crime that was plotted on the telephone. Javice and Amar
16 used the phone to produce of -- the allegations, phony names
17 that would go into the inducement of Chase to do the deal.

18 As it is said on Page 8, 9, and 10 of the affidavit,
19 there's sufficient information to show the use of phones listed
20 to Javice and to Amar, based on their use of the phone to make
21 many, many calls, and the interest to take all cell phones
22 because so many people use multiple cell phones in carrying out
23 their work. I believe this warrant was justified that way.

24 As to the giving of late notice, the warrant has to be
25 successfully executed before notice could be given, otherwise

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1 evidence will disappear. So there's nothing wrong with that
2 late notice. I deny the motion to suppress.

3 MR. BUCKLEY: Your Honor, if I could just address one
4 additional point with respect to the probable cause, not the
5 notice issue? I understand the Court's ruling on that.

6 While the affidavit at Pages 8 through 10 does set
7 forth what it purports to be an analysis of phone calls between
8 Ms. Jervice and Mr. Amar, maybe that would be sufficient if
9 this were an application for a wiretap under Title III to show
10 that we're entitled to hear these phone calls because we now
11 have demonstrated the connectivity between them.

12 The flaw in the reasoning there, as set forth in our
13 papers, is those phone calls don't relate back to the specific
14 device that they seized. And the device contains far more than
15 simply toll records. So to allow them to get such a broad
16 warrant to search the device for all sorts of electronic
17 communications for photos, for everything that's listed on
18 Appendix B of the warrant, based upon a toll analysis that
19 pertains to phones that were not even necessarily the phone
20 that ultimately was seized, I think, again, underscores how
21 overbroad and improper this warrant was. The probable cause is
22 lacking.

23 THE COURT: Certainly your argument is that it deals
24 with a continuing crime. Therefore, you cannot get wiretaps to
25 get information. But this was a crime that already occurred,

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1 and you're looking for evidence of it, and the evidence was
2 carried out in the very instruments that are the basis of the
3 search. So I deny the motion.

4 Where do we go from here, folks? Ms. McLeod?

5 MR. NITZE: Two scheduling matters.

6 First, with respect to the disclosure letter, your
7 Honor has directed -- I don't know if Ms. McLeod has a sense of
8 timing, but it is useful for us to know when we might expect
9 it.

10 THE COURT: Good thought.

11 MS. McLEOD: Three weeks, your Honor, if that's okay.

12 THE COURT: Is that satisfactory?

13 MR. NITZE: Two would be better.

14 THE COURT: One would be even better.

15 MS. McLEOD: I think three weeks would enable us to be
16 able to make the letter as accurate as possible, your Honor,
17 and not make us rush to get it done.

18 THE COURT: By June 20, noon.

19 MR. BUCKLEY: The only issue, Judge, and maybe this --
20 we can present this to you after conferring with the government
21 because I never want to be hashing out scheduling issues in
22 front of the Court, but there are disclosure deadlines that the
23 defense have that predate that June 21 --

24 THE COURT: What do you suggest?

25 MR. BUCKLEY: And it may be informed by this

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1 disclosure.

2 THE COURT: You want me to adjust those?

3 MR. BUCKLEY: With the Court's permission, we'll
4 confer with the AUSAs and ideally propose a revised schedule.

5 THE COURT: Work out something appropriate and give me
6 a stipulation.

7 MR. BUCKLEY: Thank you, Judge.

8 THE COURT: I think you already now know that Chase
9 has asked for a large amount of time to deal with the privilege
10 log, and we propose to grant that, and to have the hearing date
11 occur on July 11.

12 A time, Alexandra.

13 MR. BUCKLEY: Your Honor, we have spoken --

14 THE COURT: What time?

15 Sorry, Mr. Buckley.

16 MR. BUCKLEY: I'm sorry, Judge. Not to interrupt. We
17 had spoken with your Honor's courtroom deputy, and I think
18 would request that it be on July 12, which is --

19 THE COURT: I can't do Friday.

20 MR. BUCKLEY: Can't do Friday. Okay.

21 THE COURT: 11:15 on July 11.

22 MR. NITZE: Your Honor, our understanding is that the
23 June 28 date we proposed doesn't work because you're in the
24 midst of a trial. In the event that for some reason that trial
25 wraps itself up before June 28, I think the parties would be

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1 not just open to, but hoping, to change the privilege hearing,
2 move it up, I guess to fill that 28th date originally proposed.
3 So I just flag that for your consideration.

4 THE COURT: Well, if the trial ends, we'll get in
5 touch with you and see if we can get an earlier date.

6 MR. NITZE: Thank you.

7 THE COURT: Anything else, folks?

8 MS. McLEOD: Not from the government, your Honor.

9 THE COURT: Thank you.

10 MR. NITZE: Thank you, Judge.

11 MR. BUCKLEY: Thank you.

12 THE COURT: We don't need to exclude time, do we?

13 MS. McLEOD: I believe it's excluded until the trial
14 date.

15 THE COURT: Yeah. Okay.

16 (Adjourned)